

WAGANAKISING ODAWAK STATUTE 2004-06
TRIBAL ELECTIONS and ELECTION BOARD

SECTION I. PURPOSE

- A.** The Election Board is charged with the handling of all General, Referendum and Special elections properly called for under applicable Tribal law.
- B.** The Election Board is charged with maximizing the efficiency of the Election Board while respecting the Tribal Traditions, Values, and Culture of the Little Traverse Bay Bands of Odawa Indians.
- C.** This Statute repeals and replaces Waganakising Odawak Statute 2001-03, as amended by Waganakising Odawak Statute 2002-03.

SECTION II. AUTHORITY

The Election Board is created to carry out express mandates within the Constitution as an independent entity and shall be adequately funded to fulfill its purposes.

SECTION III. ELECTION ORDINANCE

- A.** This statute establishes the proceedings and regulations to govern elections under the Interim Constitution of the Little Traverse Bay Bands of Odawa Indians under the provisions of Public Law 103-324, or any successor Constitution adopted by the Tribe.

SECTION IV. DEFINITIONS

- A.** The titles “Board of Directors” and “Tribal Council” are used interchangeably and denote the same governing body.
- B.** The titles “Board Member” and “Council Member” denote the same official.
- C.** “Business Days” shall mean any day of the week that the Tribal Administrative Offices are open.
- D.** Certified Signatures - Signatures which can be verified with the signatures on file with Enrollment, or Voter Registration forms on file with the Election Board also includes power of attorney and/or guardianship signatures. The Election Board may take personal verification of signatures from individuals.
- E.** Constitution - The Constitution and By-Laws passed unanimously by the Board of

Directors of the Little Traverse Bay Bands of Odawa Indians, Inc. on March 3, 1989 in Charlevoix, Michigan and modified on December 7, 1991 by resolution 12079102 that was in effect on September 21, 1994, the date of enactment of Public Law 103-324, which is the Interim Governing Document of the Little Traverse Bay Bands of Odawa Indians by operation of PL 103-324, 25 U.S.C. § 1300k-6, or any successor Constitution adopted by the Tribe.

F. Dates of Events - General Tribal Elections will be held on the last Monday in June every two (2) years. Other events are determined by special elections called by Tribal Council or Referendum. When the event, such as posting of election results, falls on a Saturday, Sunday or holiday, the event will take place on the next business day. When such changes are necessary the entire sequence of events shall be adjusted to maintain the required number of days between each event. Refer to Section IV(C).

G. “Days” means a period of time consisting of 24 hours including the solar day and night.

H. Election Notice - The official notice that an election will be held on a specific date established by the Election Board.

I. General Election - The election of Tribal Council members every two (2) years and the Tribal Chairperson every four (4) years.

J. Majority - 50% plus one of the votes cast in an election. Provided, that elections for Council and Chair are determined by the highest vote recipients for each position which may or may not constitute a majority.

K. “PL 103-324” shall mean “The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act” as signed into law on September 21, 1994.

L. Poll Official - An Election Board Member or any other appointee to the Election Board serving at the polls on Election Day.

M. Polling Place - Location designated by the Election Board where balloting will take place.

N. The titles “President” and “Tribal Chairperson” denote the same Tribal official.

O. Qualified Voter - All members of the Tribe eighteen (18) years of age or older, who have been enrolled no less than ninety (90) days before the day of election.

P. Referendum Election - An election held pursuant to Article IX of the Constitution.

Q. Registered Voter - Qualified Voters of the Tribe who have a Voter Registration Form on file with the Election Board ninety (90) days before the day of election.

R. Rejected Ballot - Ballot in which the intention of the voter cannot be determined.

S. Spoiled ballot - A ballot that has markings other than what was originally on the ballot, provided the intention of the voter is not clear.

T. Submission To Election Board - All materials presented to the Election Board, with the exception of nomination petitions and petitions which are protesting the results of an election shall be transmitted to the Election Board from the Tribal Council.

U. The “Tribe” shall mean the Little Traverse Bay Bands of Odawa Indians.

V. Valid Ballot - A ballot in which the intention of the voter is very clear.

W. Voter Registration Form - Form approved by the Election Board containing both the signature of the voter and a signature of a public notary/ or a legible copy of the following forms of identification: a valid Tribal Identification Card, Drivers License, state issued Identification Card, or Passport, provided such identification bears the signature of the Tribal member.

SECTION V. COMPOSITION, APPOINTMENTS, OATH OF OFFICE, VACANCIES, AND REMOVAL OF ELECTION BOARD

A. COMPOSITION

1. The Election Board shall be appointed by Tribal Council and shall consist of five (5) enrolled Tribal members, eighteen (18) years of age or older who meet the voting eligibility requirements.

2. Election Board Officers—The Election Board shall organize itself with a Chairperson, Vice-Chairperson and a Secretary/Treasurer.

3. Election Board members cannot be candidates for any Tribal elected position while serving on the Election Board.

B. APPOINTMENTS & TERMS

1. The initial appointment of the Election Board will be for staggered terms consisting of one (1) four year term, two (2) three year terms, one (1) two year term, and one (1) one year term. The terms thereafter shall be for three (3) years.

2. There shall be no limit on reappointment.

3. The Election Board may make appointment recommendations to the Tribal Council.

4. Members will serve until their successors are appointed and sworn in.

C. OATH OF OFFICE

Election Board Members are to be sworn in under an oath of office prepared and administered by the Tribal Court within thirty (30) days of their appointment.

D. VACANCIES

1. In the event a vacancy occurs on the Election Board by virtue of death, resignation or removal, the Tribal Council shall appoint a Tribal member who meets the eligibility requirements for the remainder of the unexpired term.
2. The Election Board may make recommendations to Tribal Council to fill vacancies.

E. REMOVAL

The procedures for removal of an individual from the Election Board for the reasons listed below are set forth in the Removal of Commissioners and Nepotism Statute (WOS 1997005), or such successor statute as the Tribal Council may enact. Election Board members may only be removed for one or more of the following reasons.

1. Any act of theft, embezzlement, or fraud committed, conspired or knowingly allowed to be committed by an Election Board member.
2. Divulging the contents of confidential material or violating the secrecy of the balloting process.
3. Regular non-attendance at Election Board meetings or missing three consecutive meetings without notifying the Election Board in advance.
4. Any act or omission which violates or is inconsistent with accepted Election Board principles or responsibilities.
5. The conviction of a felony, or comparable criminal charge, in a Tribal, State, or Federal Court during the term of service, provided this conviction was not the result of treaty protected activity.

SECTION VI. TYPES OF ELECTIONS

A. GENERAL ELECTION

The General Election shall be held the last Monday in June every two (2) years for the purpose of electing the Tribal Council members whose terms are expired and the Tribal Chairman every four (4) years. Provided, in the event of extraordinary circumstances beyond the Election Board's control rendering the holding of the election impossible, such as a tornado, act or war, or unplanned shut down of the Post Office, the Election Board may postpone Election Day until such event subsides.

B. REFERENDUM ELECTION (Refer to Article IX–Right of Referendum in Constitution)

1. Any enacted or proposed ordinance or resolution of the Bands Board of Directors shall be submitted to a popular referendum upon an affirmation vote of a majority of the Board of Directors or when so requested by a petition presented to the Council containing the signatures of at least fifty (50) eligible voters of the Bands. Such referendum must be held within sixty (60) days after receipt by the Board of Directors of a valid petition. A vote of a majority of eligible voters voting in such referendum shall be conclusive and binding upon the Board of Directors provided, however, that at least thirty (30%) percent of those entitled to vote, shall vote, in such referendum conducted pursuant to Tribal ordinance.

2. PETITION PROCEDURE AND SIGNATURE VERIFICATION

- a.** Shall be submitted on the official form approved by the Election Board.
- b.** All information requested on the form must be filled in completely and legibly. Incomplete or illegible information is grounds for disqualification.
- d.** Petitions submitted to the Election Board must be date and time stamped. A receipt reflecting the number of pages accepted must be issued to the petitioner.
- e.** The Election Board shall not add to or in any way alter anything contained in the Petition. Only petitions that are complete as submitted shall be deemed valid.
- f.** In cooperation with the Enrollment Department, the Election Board shall review and validate all signatures on the petition. A valid signature is that of an enrolled member whose signature can be determined to be the same as that appearing on official enrollment or voter registration documents.
- g.** At the conclusion of the signature validation process, the Election Board shall prepare a report indicating whether or not the petition contains a sufficient number of valid signatures. This report, along with the original petition, shall be submitted to the Council at its next official meeting where a quorum is present, and shall contain the signatures of three Election Board members.

h. Upon receipt of the Election Board report, the Council shall, if the petition is found to be insufficient, return the petition and a copy of the Election Board report to the petitioner. If the petition is found to be sufficient, the Council shall proceed according to the provisions of the Constitution and/or Tribal Code.

C. PRIMARY ELECTION

1. In the event that more than (2) candidates per office file sufficient petitions and are therefore certified as candidates for elective office in any scheduled election, a Primary Election shall be conducted to reduce the number of candidates in the General Election to two (2) candidates per office.

2. In the event that a Primary Election is required under this Section, the Primary Election shall be conducted no less than forty five (45) days prior to the General Election. Ballots for the Primary Election shall be mailed no later than seventy five (75) days prior to the General Election.

3. If a Primary Election is required under this Section, the schedule for distribution of Notice of Election and candidate filing dates shall be scheduled to coincide with the scheduled date of the Primary Election.

4. If two (2) or less candidates file sufficient petitions for an elected office, then a Primary Election shall not be required and the standard election calendar shall apply.

SECTION VII. REGISTRATION & VOTING

A. CANDIDATE QUALIFICATIONS

Enrolled Tribal member eighteen (18) years of age or older and registered to vote by the date of election.

B. REGISTRATION

1. This section sets out procedures to ensure that a vote cast in the name of the voter is in fact cast by that voter.

2. Each Tribal member who desires to vote in an Election, must have a Voter Registration Form on file with the Election Board ninety (90) days before the day of election.

3. The Voter Registration Form shall be in a format approved by the Election Board.

4. The Voter Registration Form must be signed by the Tribal member and verified either by (1) the seal and signature of a notary public or (2) attaching a legible copy of one of the following forms of identification: a valid Tribal Identification Card, Drivers License, state issued Identification Card, or Passport, provided such identification bears the signature of the Tribal member.
5. It is the responsibility of each Tribal member who wishes to vote in an election to ensure that he or she has submitted a Voter Registration Form to the Election Board.
6. Any voter who changes his or her name shall submit a new Voter Registration Form to the Election Board.
7. Based on the Voter Registration Forms submitted to the Election Board, the Election Board shall keep a roster of Voters known as the Poll Book with Voters listed in alphabetical order or nearly so as possible. The Election Board shall update the Poll Book as Voter Registration Forms are submitted.

C. VOTING

1. Voting shall be done by secret ballot mailed to all Tribal members registered to vote under subsection (B) above.
2. All ballots shall be sent with a self-addressed stamped return envelope.
3. All ballots mailed to the Election Board must be received at the designated Michigan Post Office no later than 4:00 p.m. on Election Day or hand delivered to the Polling Place by 6:00 p.m. Ballots may be hand delivered to the Polling Place on Election Day only.
4. No voter shall cast more than one ballot in any election.
5. No write-in candidates will be allowed.
6. Replacements ballots will be available upon request by mail, or at the polling place on the day of election. Only one ballot per voter will be counted in the final results.

SECTION VIII. COUNTING, POSTING & RETENTION OF BALLOTS

A. BALLOT COUNTING

All ballots will be opened, counted and recorded by the Election Board in an open meeting.

B. POSTING OF RESULTS (PRELIMINARY)

1. The preliminary results will be posted as follows:
 - a. Within twenty four (24) hours after the closing of the polls in ONE VISIBLE & ACCESSIBLE PLACE designated by the Election Board. (Refer to Section IV(F) Dates of Events)
 - b. Within three (3) business days on the Little Traverse Bay Bands of Odawa Indians website.

C. CERTIFICATION OF ELECTION RESULTS

The election shall be certified by the Election Board within ten (10) business days after the closing of the polls, providing there are no unresolved challenges pending.

D. ELECTION RESULT CHALLENGES

1. Ten (10) business days after the preliminary election results are posted, all election results shall be declared final, unless the results are protested. Any qualified Tribal voter who cast a ballot in the election in question may protest the results of an election by filing a written protest with the Election Board within ten (10) calendar days after the preliminary results are posted. The Election Board must act in an expedient manner on any protest received, in all cases reaching a decision within thirty (30) days of the date of the filing of a protest.
2. A Tribal member who filed a protest under this section may file a challenge in Tribal Court of the decision of the Election Board within five (5) business days from the date the Board issues such decision. If no challenge is filed in Tribal Court, the election results shall be deemed final five (5) business days after the Election Board renders its decision. If a challenge is filed in Tribal Court, the election shall be deemed final upon the rendering of a decision of the Tribal Court. The Tribal Court shall hold a hearing and issue its decision within forty five (45) days from the date the challenge is filed.

E. RETENTION OF BALLOTS

1. The Election Board shall retain all ballots in sealed containers, including ballots that were determined not to be valid for any reason until the election is deemed final.
2. Upon finalization of election results, ballots will be retained in secure containers for one year.

SECTION IX. NOMINATIONS, ELECTIONS & TIME FRAMES

A. NOMINATION PROCEDURES

1. Nominations for candidates are placed on petitions designated by the Election Board.
2. Candidates must be enrolled Tribal Members, eighteen (18) years of age or older and registered to vote in the election.
3. The nomination petitions shall contain the signature and Tribal enrollment numbers of twenty five (25) registered voters.
4. A registered Tribal voter may sign more than one nominating petition.
5. Petitions will be prepared and mailed by the Election Board to all members registered to vote at least one hundred thirty four (134) calendar days prior to the election.
6. Nomination petitions must be submitted to the Election Board no less than one hundred four (104) calendar days prior to the election.
7. Candidates shall submit a written statement on a form prepared by the Election Board and any other documentation requested along with their nomination petition.
8. The Election Board shall review and validate all petitions received within the time frame of one hundred four (104) calendar days and prepare a final list of candidates no later than ninety (90) calendar days prior to the election.
9. Candidates wishing to withdraw their names will do so in writing no less than forty five (45) calendar days prior to the election.
10. The Election Board shall prepare the election ballots and mail them to all eligible voters no less than thirty (30) calendar days prior to the election.
11. Names on the ballots will appear in the order in which their nominating petition is received.
12. Names shall appear on the ballot as they are printed on the nomination petition.
13. No Election Board member may sign any petitions except in the petition validation process.
14. Two Election Board members shall sign, time and date all petitions after validation process.

B. ELECTION DAY PROCEDURES

- 1.** Polls open at 9:00 a.m. at a place designated by the Election Board and announced to the membership through the election notices.
- 2.** The Election Board Chairperson or Election Board Vice-Chairperson and one other member of the Election Board and a Tribal Police Officer will go to the Post Office to retrieve the ballots.
- 3.** Ballots are brought back to the polling place, removed from the envelopes and placed in the ballot box.
- 4.** The envelopes are counted and the membership numbers are recorded by the Election Board.
- 5.** Ballots are opened and tabulated. Results of the tabulations are recorded by the Election Board. The Election Board may use electronic means to tabulate ballots.
- 6.** At 4:00 p.m., the Election Board Chairperson or Election Board Vice-Chairperson and another member of the Election Board and a Tribal Police Officer leave to make the final pick-up from the Post Office.
- 7.** These ballots are then processed as described above.
- 8.** Polls close at 6:00 p.m. and the counting and recording continue until all the ballots are recorded and tabulated.
- 9.** The preliminary results are posted as follows:
 - a.** In ONE VISIBLE AND ACCESSIBLE place designated by the Election Board within twenty four (24) hours after the closing of the polls.
 - b.** Within three (3) business days on the Little Traverse Bay Bands of Odawa Indians website.

C. TIES

A. GENERAL ELECTION

- 1.** In the event that at the completion of the canvas of the General Election results the tally reveals that any candidate has received the same number of votes as received by another candidate in that contest, the Election Board will conduct a recount of the ballots cast in that contest. Should a tie exist at the completion of the recount, the Election Board will conduct a special run-off election limited to the tied candidates unless the breaking

of such tie will not affect the outcome of the election. Such a run-off election shall be immediately noticed to be held not more than forty five (45) days from the date of the General Election.

2. The same procedure will be followed for a tie in a referendum election.

B. ANNOUNCEMENT OF RESULTS---RUN-OFF ELECTION

1. An uncertified statement shall be issued and posted to announce the election results within three (3) days following completion of the canvas of the election.

D. RECOUNTS

1. Any contest involving a recount for the votes cast shall be done at the expense of those requesting such a recount for a non-refundable fee to be determined by the Election Board. Upon receipt of the contest and the fee, the Election Board shall proceed with the recount for the particular office, or particular measure. All recounts shall be completed prior to the posting of the official certification of election results. The decision of the Election Board is final.

2. The exception to the fee being paid will be for recounts done as a result of tie votes for a particular position or measure.

E. POLL SITTERS

Poll sitters are person who by contractual agreement observe the activities of the election process at the polling place on Election Day. They shall not interfere in any way with the proceedings.

F. POLL WATCHERS

Each candidate for a position on Tribal Council is entitled to have one person observe on their behalf, the counting of ballots at the polling place on Election Day. The name of that person shall be submitted on a form approved by the Election Board to the Election Board prior to Election Day. They shall not interfere in any way with the proceedings.

G. CAMPAIGNING

1. Campaigning for Tribal offices is prohibited in Tribal Governmental Operations buildings during normal business hours.
2. A written campaign financial statement must be submitted by each candidate to the Election Board within thirty (30) calendar days after the final official certification of the election.

H. OATH OF OFFICE

At the first regularly scheduled Tribal Council meeting after the certification of the election results, the Tribal Court will conduct the swearing in ceremony for the newly elected members. Incoming Council members' terms shall commence, and outgoing Council members' terms shall expire, upon such swearing in.

SECTION X. CONFLICT OF INTEREST– PENAL PROVISIONS

A. CONFLICT OF INTEREST

An Election Board member shall recuse him or herself from any election or certification involving an immediate family member. A member of an immediate family for purposes of this statute is any person living in the candidate's household, or a parent, brother, sister, spouse, son or daughter of the candidate.

B. BRIBERY OF ELECTORS

It is unlawful to knowingly give or cause to be given or promise to be given, any money to any person as reimbursement for money or other thing of value expended by such person in whole or in part for bribery at any Tribal election: provided, however, that it shall not be unlawful for any candidate personally or by agent to provide transportation to the polls of any voter.

C. COERCION OF ELECTOR

It is unlawful to make use of force, or to request another person to use or threaten force, in order to influence any person's vote in any election, or to prevent any person from voting in any election.

D. INTIMIDATION OF TRIBAL MEMBER EMPLOYEES BY EMPLOYER

1. It is unlawful for any employer to threaten a Tribal member employee with dismissal from employment, reduction of pay, loss of seniority, transfer, or less favorable working conditions, for the purpose of influencing such employee to vote or refrain from voting, or to vote for any particular person in any Tribal Election.

2. As used in this section the term "employer" means any entities or natural persons, and their agents, employing Tribal members, including contractual relationships, over whom the Tribe may properly exercise criminal jurisdiction.

E. INTERFERENCE WITH OR CORRUPTION OF ELECTION OFFICER

It is unlawful for any persons to offer or give a bribe to any member of the Election Board, or to influence or attempt to influence any of said officers in the performance of their official duties by means of force, or threats or promise of any nature.

F. VIOLATION OF DUTY BY ELECTION BOARD

It is unlawful for any member of the Election Board to knowingly and willfully fail or neglect any duty under any part of this statute in the manner prescribed by this statute, or to accept any money or other thing of value from any candidate or from anyone acting or purporting to act on behalf of any candidate. Members of the Election Board shall not endorse any candidate while performing duties under this statute.

G. TAMPERING WITH ELECTION BALLOTS

It is unlawful for persons to tamper with election ballots, tallies, voting materials, or any compilation summaries, or totals of voting results by destroying, defacing, writing on, changing marks or totals on any such ballots or voting materials or results.

H. FEDERAL EMPLOYEES

It is unlawful for any federal employee over whom the Tribe may properly exercise criminal jurisdiction to interfere with any Tribal Election campaign by using federal resources to actively and overtly encourage and support any candidate, by allowing a candidate access to confidential federal information such as names and addresses of voters, or by providing any candidate any service or thing of value.

I. PENALTIES

A person convicted of an offense under this section may be sentenced to a jail term not to exceed one hundred eighty (180) days or to a fine not to exceed five thousand dollars (\$5,000.00) or to both.

SECTION XI. AMENDMENTS

- A.** The Election Board may make recommendations to the Tribal Council regarding future amendments to this Statute.
- B.** No amendments to this Statute can take effect while an election is in progress.

SECTION XII. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is

found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

SECTION XIII. EFFECTIVE DATE

This Statute shall take effect immediately upon enactment.

Certification

As Tribal Chairman and Tribal Secretary, the undersigned certify that this Statute was duly enacted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 26, 2004 at which a quorum was present, by a vote of 5 in favor, 1 opposed, 0 abstentions, and 1 absent as recorded by this roll call.

	In Favor	Opposed	Abstained	Absent
Regina Gasco Bentley	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Frank Ettawageshik	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Frederick Harrington, Jr.	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Beatrice Law	<u> </u>	<u> </u>	<u> </u>	<u> x </u>
Dexter McNamara	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
Rita Shananaquet	<u> </u>	<u> x </u>	<u> </u>	<u> </u>
Alice Yellowbank	<u> x </u>	<u> </u>	<u> </u>	<u> </u>

Date: _____

Frank Ettawageshik, Tribal Chairman

Dexter McNamara, Tribal Secretary